IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

THURSDAY, THE 4TH JANUARY 2007 / 14TH PAUSHA 1928

AS.No. 371 of 1996()

OS.210/1991 of SUB COURT, OTTAPPALAM
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APPELLANTS/DEFENDANTS 4 TO 10:
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1. SULOCHANA, AGED 40 YEARS, DAUGHTER OF KUNHILAKSHMI AMMA.

2. ARAVINDAKSHAN, AGED 38 YEARS, S/O. DO.

3. JANARDHANAN ALIAS KUNHUKUTTAN, AGED 36 YEARS, SON OF DO.

4. KOMALAVALLI, AGED 34 YEARS, D/O. DO.

5. RAVINDRAN, AGED 33 YEARS, S/O. DO.

6. BHASKARAN, AGED 32 YEARS, S/O. DO.

7. INDIRA, AGED 26 YEARS, D/O. DO.

ALL THE APPELLANTS ARE RESIDING AT PANDARATHIL HOUSE, CHERUKATTUPULAM AMSOM AND DESOM, OTTAPPALAM TALUK.

BY ADV. SRI.N.K.SUBRAMANIAN

RESPONDENTS/PLAINTIFF AND DEFENDANTS 1 TO 3:
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1. MADHAVAN NAIR, AGED 64 YEARS, S/O.JANAKI AMMA.

2. KUNHILAKSHMI AMMA, AGED 62 YEARS, D/O. DO.

3. RAMAKRISHNAN NAIR, AGED 60 YEARS, S/O. DO.

4. CHANDRASEKHARAN NAIR, AGED 57 YEARS, S/O. DO.

RESPONDENTS ARE RESIDING AT
CHERUKATTUPULAM ASMOM AND DESOM,
OTTAPPALAM TALUK.

BY ADV. SRI.A.P.CHANDRASEKHARAN,
SMT.PRABHA.R.MENON
SRI.KODOTH PUSHPARAJAN
SRI.M.KRISHNAKUMAR

THIS APPEAL SUITS HAVING BEEN FINALLY HEARD ON 04/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

THOTTATHIL B.RADHAKRISHNAN, J

A.S.No.371 OF 1996

Dated this the 4th day of January, 2007

JUDGMENT

1. Defendants 4 to 10 in a suit for partition are the appellants in this appeal against a preliminary decree.

2. The plaint schedule consists of two items, A and B. The plaintiff claimed partition holding 1/4th share over A schedule property and 1/11th share over B schedule property. The contesting defendants conceded the claim for partition of B schedule as sought for, but contended that A schedule property also has to be partitioned into 11 shares. Overruling the objections of the contesting defendants, the lower court passed a preliminary decree as prayed for by the plaintiff. Hence this appeal.

3. The tharavad to which the parties belong consisted to two tavazhies. The said branches separated as per Ext.B1 partition dated 10.7.1935. B schedule property was allotted to

the tavazhi of which Janaki Amma was the karanavathi. By that document, they also got an amount of Rs.50/- by adjusting the value of the tarwad which was given to the other tavazhi in Ext.B1 partition. On 28.9.1935, ie. just about two months after Ext.B1 partition, Ext.A1 sale deed was taken in the name of Janaki Amma acquiring thereby, the A schedule property for a total consideration of Rs.50/- shown to have been paid by Janaki Amma.

4. The short issue that arises for decision in this appeal is as to whether the acquisition as per Ext.A1 in the name of Janaki Amma utilising the fund paid by her is an acquisition by herself to the exclusion of the other members of the tavazhi of which she is the karanavathi or whether the acquisition enures to the benefit of her tavazhi.

5. At the time of Ext.B1, the family headed by Janaki Amma consisted of her children, viz. plaintiff and defendants 1 and 2 as also one Padmavati, who died before Ext.A1 acquisition. Thereafter, the third defendant was also born to Janaki Amma.

This means, on the date of the statutory severance of the joint family status by the coming into force of the Kerala Joint Hindu Family System (Abolition) Act, 1975 (Act 30 of 1976) Janaki Amma's tavazhi had the plaintiff and defendants 1 to 3 and all their children, who ever were alive on that date. They are defendants 4 to 10. Thus plaintiff and defendants 4 to 10 constituted the tavazhi of Janaki Amma on the date of the statutory severance of joint status.

6. Janaki Amma was undisputedly the Karnavathi of the tavazhi. She stood in a fiduciary capacity in her relationship with the members of the tavazhi. If any reference is needed at this point of time, it would be sufficient to read the judgment by the Apex Court in **Achuthan Nair** v. **Chinnamu Amma and Others** (AIR 1966 SC 411) and the decisions of this Court in **Kayakkal Lakshmi and Others** v. **Kayakkal Anandan and Others** {1982 (2) ILR Kerala 377} and in **Sarojini Amma** v. **Abubacker** (1986 KLT 944). Ext.B1 shows that amounts were available to the tavazhi as a result of the adjustment between the tavazhies as per Ext.B1 partition. This means, such

amount was available with the tavazhi and it belonged absolutely to the tavazhi and not to the Karnavathi, independent of the tavazhi. The precedents referred to above will also show that it is the law that acquisition by Janaki Amma is to be presumed to be on behalf of the tavazhi, unless it is shown that the joint family nucleus did not exist to make the acquisition and that a member of the tavazhi made the acquisition using her exclusive fund, which is shown to be independent of the family nucleus. When it is proved that the tarwad possesses sufficient nucleus, in this case by Ext.B1, it is to be presumed that the acquisition made utilising such nucleus is tarwad property, (property of the tavazhi in this case) and the onus will be shifted to the individual member to establish that the property was acquired without the aid of the said nucleus. Has that presumption, a strong one, been rebutted ? No. Even the documents would show that Janaki Amma was a house wife with no other known source of income, being shown as ' '. Nor has it been pleaded and proved that she had any independent income.

7. So much so, the trial court erred in law to held that the plaintiff was entitled to 1/4th share in the A schedule property. Parties to the suit are entitled to 1/11th share in A schedule property also.

In the result, this appeal is allowed and the preliminary decree passed by the trial court is modified to the effect that the plaint A schedule property shall also be divided by metes and bounds into 11 equal shares and, out of that, one share each shall be set apart to plaintiff and all the defendants. The house in the plaint A schedule shall be set apart for the first defendant without any value. The preliminary decree of the trial court is confirmed in all other respects. The parties are directed to bear their respective costs.

THOTTATHIL B.RADHAKRISHNAN
Judge

kkb.

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THOTTATHIL B. RADHAKRISHNAN, J

A.S.NO.371 OF 1996

JUDGMENT

4th JANUARY, 2007.

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